IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 972 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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UNITED INDIA INSURANCE CO.LTD. - Appellant(s)
Versus
SADIQ HUSEIN YASINKHAN BALOCH & 2 - Defendant(s)

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Appearance :
MR PV NANAVATI for Appellant(s) : 1,
MR MG NAGARKAR for Defendant(s) : 1,
NOTICE SERVED for Defendant(s) : 2 - 3.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 30/08/2006

ORAL JUDGMENT

1. By way of this appeal, the appellant has challenged the judgment and award passed by the Motor Accident Claims Tribunal, Sabarkantha at

Himmatnagar in M.A.C.P No. 147/87 on 1.9.90 awarding Rs. 23,000/- to the claimant, the appellant herein prefers this appeal in so far as the award is for more than Rs 15,000/-.

2. On 5.9.86 the claimant at midnight was going in a autorickshaw from Modasa to S.T and at that time another autorickshaw dashed with the autorickshaw wherein the claimant was travelling. As a result of this accident he suffered serious injury and therefore he filed the aforesaid claim petition.

3. Learned counsel for the appellant has contended that in view of the specific provision contained in section 95 (2) (b) (ii) of the Motor Vehicles Act, the Insurance Company's liability in respect of passenger carried for hire or reward is limited to Rs 15,000/-. The relevant part of the said section as existing at the time of the accident reads as under:

> “95.(2) subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:-
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> (a) xxxx xxxx xxx

(b) where the vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment,

(i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all,

(ii) in respect of passengers, a limit of ten thousand rupees for each individual passenger."

4. A perusal of the said section shows that the liability in respect of passengers, is limited to an extent of Rupees Ten Thousand for each individual passenger. The accident in question is of the year 1981 and therefore the liability would not be more than Rs 15,000/- qua the Insurance Company. This view is supported by a decision of this court in the case of United India Fire and General Insurance Co. Ltd. Vs. Bachu Kaba Satrotia and ors., reported in 1986 (1) GLR 463 wherein it is held that under section 95 (2) of Motor Vehicles Act (IV of 1959) the liability of insurer in respect of a passenger carried for hire or reward by statute is limited to Rs 10,000/- per individual passenger.

5. Learned counsel for the respondent-original claimant is not able to contest the aforesaid legal

position. Therefore the award of the Tribunal which extending more than Rs. 15,000 qua appellant is patently erroneous.

6. In the premises aforesaid, the present appeal is partly allowed. It is held that the liability of the present Nos. 2 and 3 i.e original opponent Nos. 1 and 2 shall remain intact to meet the entire claim awarded with interest as awarded by the Tribunal. However, so far as the present appellant Insurance Company is concerned, the award will stand modified and instead of Rs 23,000/- with running interest thereon at the rate of 12% per annum from the date of the application till realisation. It will be open to the original claimant to recover the remaining amount from respondent Nos 2 and 3 i.e original opponent No. 1 and 2. The remaining amount lying in the FDR along with interest shall be refunded to the Insurance Company. The award of the Claims Tribunal shall stand modified accordingly. No order as to costs.

(K.S.Jhaveri,J)

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